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THE LEADERSHIP OF VIRGINIA IN THE WAR OF
THE REVOLUTION.

PART II.

THE TWO PENNY ACT.¹

The speech of Otis on the writs of assistance, in 1761, has been extolled by many New England writers as "the prelude, if not the opening, of the Revolutionary Drama." My opinion as a Virginian may be subject to suspicion, but I think that the controversy involved in the Two Penny Act in Virginia has a much better title to that great honor. Let the facts decide.

1. The latter controversy was first in time since colonial resistance began, in 1755, with the passage of the act, while in the latter case, it began in 1761, with the speech of Mr. Otis, or at any rate, with the filing of his petition.

2. The latter had a direct connection with the revenue question, which is commonly admitted to have been the immediate cause of the Revolution. The colonies claimed that the control of the treasury was a local right inherent in the local assemblies. The Two Penny Act asserted this right against the King's authority, just as the resolutions of Patrick Henry in 1765, asserted the same right against the Parliament. The affair of the writs of assistance simply involved a legal question, which was as applicable to one place in the British Empire as another, and the Massachusetts Assembly did not deny the right of the British Parliament to make laws for the American continent.² Otis spoke for the privileges of a British subject.

¹ This article contains the substance of an address read by the editor before the Virginia Historical Society, January 6, 1910. In due order it should be the first, not the second, article in the series. Since the address was delivered, Dr. Eckenrode, of the State Library, has published a paper entitled "Separation of Church and State," which bears upon this question and has been very suggestive.

² In the message of the Massachusetts Council and Assembly to Governor Bernard, commenting upon this trial, the following language was used: " * * * and beg leave to observe that we are far from apprehending that a resolve of this court can alter an Act of Parliament. * * * Every act we make repugnant to an Act of Parliament extending to the plantations is *ipso facto* null and void."

3. The Two Penny Act involved the assembly, the governor, the council, several county courts, the clergy, several pamphleteers, lawyers and orators, and even the King and privy council of England. The controversy championed by Otis involved a few merchants of Massachusetts, a few orators and lawyers and the supreme court of the Colony, who decided against him.

4. In the latter controversy—The Two Penny Act—pamphlets antedating Otis' speech proceeded from Carter and Bland, in which the ultimate authority of the Virginia assembly in local matters was maintained. There is also contemporary evidence that Patrick Henry, in 1763, uttered words of treason, and none that Otis ever did. The striking paragraph from John Adams describing Otis as "a flame of fire," which is often quoted to support his imputed rebelliousness, was written by John Adams fifty-seven years after the event occurred.³

³ There is nothing in the contemporary accounts calculated to impress us that anything very extraordinary occurred when Otis spoke. Hutcheson, the historian of Massachusetts, who was alive to every incident of the times makes no such allusion to Otis. The only contemporary language imputed to Otis is by John Adams in some notes taken, as he says, "in a very careless manner," but these contain nothing disloyal or treasonable. Adams, *Works* II., 521.

In 1798 Mr. Adams gave Mr. Minot a fuller transcript of his notes and Mr. Otis' speech written from memory. But no one can say how much of it is Adams and how much of it is Otis. As we read it to-day, there is nothing in the speech especially bearing on American relations to the Mother Country. Minot proceeded to embellish it after his own ideas. Adams, *Works* II., 125, 521. In his autobiography, Adams spoke again of the trial, but in general terms. Lastly, in 1817, in certain letters to William Tudor he used some stirring rhetoric, but little that Adams says at such a distance of time (fifty-seven years) can be accepted as history. Adams, *Works* X., 183, 247, 280. He states, for instance, that no writs issued after the trial, when, according to the record, they were issued most freely. Gray in Quincy's *Reports*, 405-434.

The plain truth is that Adams, like Andrew Jackson, belonged to that class of strong-willed, positive kind of people, whose nature it is to forget what they wished had never occurred, and to remember vividly the occurrences which flatter their ruling passion, and unconsciously to exaggerate the facts in connection with it.

5. The controversy over the writs of assistance was simply a legal fight, but in the case of the Two Penny Act the question was aggravated by the religious features connected with it. The growth of dissent in Virginia was immensely encouraged by the victory obtained over the established church which had identified itself with the prerogatives of the crown. In the subsequent agitations, the advanced patriotic party in Virginia was largely the dissenting element.

6. There could be no comparison in the effects of the two controversies in the respective colonies. Otis utterly failed to make good his protest, for the courts decided against him and afterwards quietly executed the writ. If, according to John Adams, "then and there the child of independence was born," it was stillborn, for no rebellion can ever spring from a dead failure. How different the Two Penny Act controversy; the juries and the highest court of the colony decided against the Parsons, and the privy council of the King after taking ground in their favor backed down from its position and evaded giving them any relief. The agitations over the Two Penny Act mingled with the agitations over the Stamp Act and the tax on tea, and powerfully swelled the tide which rolled the colony on to independence.

My intention is to give more in detail than has generally been done the history of the Two Penny Act. When the controversy started Virginia had a population of 295,672 persons, of whom 120,156 were negroes. Great Britain and France were waging a war for dominion over the Western continent, in which the first blow was struck by a young Virginia colonel, named Washington. Robert Dinwiddie, a bluff and able Scotchman, resided in the palace at Williamsburg as Governor, and his great ambition was to whip the French. To these troubles with the French, was added now a domestic trouble with the ministers.

Virginia had a State Church represented by about sixty ministers, who were most of them Englishmen from the English universities. In regard to their morals many causes have contributed to give them a bad reputation in history. They have

suffered at the hands of travellers who are given to generalize from a few special cases. They naturally opposed the spread of dissent, and as a result were condemned by the dissenters. Reformers, like Jarratt and Meade, have abused them because such is the unconscious spirit of reform to see little good in anything from which it dissents. Finally, they suffered from the patriotic writers who, in spite of the demonstration of the Virginia clergy in favor of the colony, when war was at hand, never forgot their appeal to the power of the crown at this time. Some of the ministers were, without doubt, men of loose morality, but Rev. Andrew Burnaby, who spoke discriminatingly reported the majority to be of "sober and exemplary lives." This did not mean that this majority did not drink and play cards, for drinking and playing cards, however, condemned by us moderns, are not necessarily immoral or destructive of piety and were universally indulged in before the Revolution.*

Probably all that Burnaby meant to say was that the Virginia clergy would bear comparison with the English clergy, of whom he was one and were as a body superior in their habits to the majority of the laity.

By an act passed in 1748, entitled "An Act for the Support of the Clergy and for the regular collection of the parish levies," the salary of the clergy was fixed at 16,000 lbs. of tobacco. This act, being approved by the Governor, went immediately into effect in Virginia, and, subsequently receiving the royal approval in England, became according to the "ancient constitution and

* Drinking was by no means confined to Virginia. The chief industry of New England was the making of rum, whereof a goodly amount was consumed at home. John Adams said that every other house in the different towns of the county in which he lived were taverns, dirty, or miserable accommodations, and "full of people drinking drams, flip, toddy, carousing, swearing, but especially plotting with the landlord to get him at the next town meeting an election either for selectman or representative." Adams, *Works* II., 125, 126. This confirms what the Baron Reidesel says in his *Memoirs*: "The New Englanders all want to be politicians and love, therefore, the tavern and the grog bowl, behind the latter of which they transact business, drinking from morning till night." See QUARTERLY, IX., 271.

usage" of the colony irrevocable except by an act of equal dignity, that is, one having also the royal approval. In December, 1755, the Assembly passed an act to remain in force for ten months, allowing all tobacco dues to be paid at the option of the payer, at sixteen shillings, eight pence for each hundred pounds of tobacco. Because the price set was equal to two pence a pound, the law was called the "Two Penny Act."

The act had no suspending clause for the King's approval, but was to go into effect at once and the reason alleged in the preamble for its passage was "a great drouth," which threatened to reduce the tobacco crop and make taxes too heavy in this period of war.

To the clergy, however, the price was naturally very distasteful, because it not only cut them out of their gains, but tended to make of them thoroughly subordinate to the Assembly.

After the passage of the bill through the House of Burgesses, a fight against it was begun in the council. In that body Thomas Dawson, one of the professors in the College of William and Mary and commissary to the Bishop of London, made a strong speech against it, but in vain. After its passage through the council, four of the clergy also professors, John Camm, William Preston, Thomas Robinson and Richard Graham, called upon Governor Dinwiddie, and begged him to use his veto. This gentleman, who had his whole heart and soul in the French war, and for this reason did not wish to displease the Virginians replied: "What can I do? If I refuse to approve the act, I shall have the people on my back." He promised, however, to refer the question to the council for advice, a step not calculated to help the cause of the clergy, as that body had already approved the bill in their legislative capacity. Now, as his official advisers, they counselled him to sanction the bill, taking the ingenious ground that it did not lessen the quantity of tobacco to be paid, but only explained it by ascertaining the equivalent in money. After this advice Dinwiddie approved the bill.

Then the local clergymen tried to get Commissary Dawson to call a convention of the clergy, but he thought such a call imprudent and advised them to ask the intervention by letter of

the Bishop of London, who was their diocesan. This, some of the clergy, accordingly, did, and Commissary Dawson wrote in their behalf. But this was not entirely satisfactory, and the effort was again made to get the Commissary, now elected President of the College, to call a convention. When he refused to do this, he was bitterly condemned by the four before mentioned professors, and they joined with seven other ministers and advertised in the Virginia Gazette for a clerical convention to be held August 31, 1757, a course which greatly incensed Governor Dinwiddie, who was condemned by them. But the two pence per pound permitted by the Act, having by this time turned out the average value of tobacco, only nine of the brethren thought it worth while to attend the convention; and these forebore to make any complaint. So the cloud at this time broke, and the trouble in its acute stages passed away, not failing, however, to leave behind a bitter crop of bad feelings, which were manifested especially in the College circle. On various charges the Board of Visitors, in 1757, removed three of the professors, Camm, Robinson and Graham, and the fourth, William Preston, escaped removal only by returning to England. The College exercises were practically suspended and many parents sent their children to the new College at Philadelphia. Among the charges laid at the door of the Rev. William Preston and the Rev. Thomas Robinson was the fact of their marrying and "keeping contrary to all rules of seats of learning, their wives, children and servants in the College, which occasioned much confusion and disturbance."

In June, 1758, Dinwiddie was superseded as governor by Francis Fauquier, who, in spite of his rather peppery temper, was nearly everything that could be wished for in a royal governor. He was generous and liberal in his manners, and as a fellow of the Royal Society of England, he had a scholarly character and fine literary taste.

But public affairs during the colonial times never continued long without a quarrel, and several months after Fauquier's arrival the General Assembly, which met in October, 1758, framed "on account of some unseasonable weather" another Two Penny

Act to continue for twelve months. As in the former case there was no clause suspending the operation of the same until sanctioned by the Crown. The clergy now became thoroughly indignant, and a deputation consisting of the Commissary, Rev. Thomas Dawson, and two eminent ministers, Rev. John Camm and Rev. William Robinson, went to the palace, but Fauquier was even more unsatisfactory than Dinwiddie. This is the account of their interview as given by Mr. Robinson: "We humbly represented to his Honor that the act which we were threatened was contrary to reason and common justice. His answer was *that* was not a point to be considered. We then gently put him in mind that it was contrary to his instructions. He answered that is a point not to be considered. It was asked what was the point to be considered and he frankly told us the sole point to be considered was what would please the people." "Which put an end," says Robinson, "to our application."

The apprehension at this time in regard to the crop turned out correct, and the market price of tobacco rose to six pence per pound. The clergy determined to appeal to the King and a convention of thirty-five ministers assembled at the College. They drew up a memorial and intrusted it to Rev. John Camm, formerly Professor of Divinity in the College and minister of Yorkhampton Parish, which was one of the parishes adjoining Williamsburg, and lying in York County.

This action of the clergy put an entirely new phase upon the question. There was room to question the fairness of the Assembly in passing a law which took effect retroactively, after the salaries had already accrued. and the clergy was undoubtedly within their moral and legal right in opposing the bill as long as it could be reasonably opposed in the colony, but an appeal to the King against the colonists was to say the least very unwise, if not unjustifiable. The clergy could not have been ignorant that the assertion of the royal prerogative had provoked more than once the deep resentment of the people for whom they ministered. Only a few years before the Assembly had protested against this very branch of prerogative that they now invoked which made an act that was without the approval of the

King invalid. By their action in appealing the strength of their individual cause became lost in the much more important question whether in a matter purely local, a matter indeed involving a question of local taxation, any other will than that of the Assembly should prevail. As in the British Empire to-day the King's authority is chiefly sentimental and Parliament cannot reach outside of its Island dominion, so the inevitable tendency of colonial affairs before the separation of the United States was to absolute or qualified independence.

Mr. Camm, the agent of the clergy, went to England in the early part of 1759 and with the assistance of the Archbishop of Canterbury, obtained an interview with the King, to whom he presented the clergy's petition. The King referred the paper to his privy council, who on May 14, 1759, referred it to the Board of Trade, and the latter thought it expedient to ask the opinion of Dr. Thomas Sherlock, Bishop of London. The Bishop's letter of reply which is dated June 14, 1759, fully sustained the memorial and denounced the Two Penny Act as unjust to the clergy, inconsistent with the dignity of the Crown, and tending to draw the people of the plantations from their allegiance. On the other hand, James Abercrombie, the colony's agent, vigorously represented the colony. July 4, 1759, the Board of Trade reported to the King that their opinion was that he should declare "his royal disallowance of the acts of December, 1755, and October, 1758," which was, accordingly, done in council on August 10 following. Mr. Camm was elated and immediately wrote to his attorney in Virginia to bring suit for his salary in the General Court against the vestry of Yorkhampton parish, but it was not without considerable loss of time that he was furnished with a copy of the order and additional instructions for Governor Fauquier. So after a stay in England altogether of 18 months he set out on his return to Virginia and arrived at Hampton in June, 1760, where in order to refresh himself after the tedium of the sea voyage he accepted a week's hospitalities from his friend, the Rev. Thomas Warrington.

During the absence of Camm great excitement prevailed in Virginia, and after his suit began in the General Court the General

Assembly on November 14, 1759, adopted a resolution to support the authority of the defendant vestry and in their letter of December 12, the Committee of Correspondence of Virginia instructed their agent in London (Edward Montague) to employ the necessary counsel in case of any appeal to England should be taken in Camm's suit. As about this time the Bishop of London's letter began to be circulated among the clergy in the colony, two champions of the people sprang into the arena and assumed to reply to the Bishop's strictures. These were Col. Landon Carter, of Sabine Hall, in Richmond County, and Col. Richard Bland, of Jordan's, in Prince George County.

Both of these men were well informed on the history of Virginia, and probably neither of them had much love for the clergy. We know that some years before, Col. Carter became incensed with a Reverend gentleman, who preached a sermon against pride, which he took to himself. As a consequence Col. Carter had vowed that he would never be satisfied until, despite the King, Bishop, government or any court of judicature, he turned the said reverend gentleman out of his office and "clipped the wings of the whole clergy in the Colony." We know nothing of Col. Bland's relations to the clergy, but the Journal of the House of Burgesses clearly shows that he was the author of both the Two Penny bills. Col. Carter's pamphlet, which was entitled "A letter to the Right Reverend Father in God, the Lord Bishop of London" was dated December, 1759, and printed in Williamsburg the same month. Col. Bland's pamphlet was dated March 29, 1760, and printed soon after. Each of these pamphlets set out to defend Virginia against the Bishop's charges. They contended that the General Assembly, in fixing the salary of the clergy in 1748 at 16,000 pounds of tobacco, had in mind its value in ordinary years and had not intended that it should amount to three times that sum.

As to the claim that the act had not the royal approval and was also against the Governor's instructions, Col. Carter argued that there were exceptions to all cases and that justice to the people and charity to the poor made this tobacco act an exception. Col. Bland, who was much the better writer of the two, took the

ground of the *Salus populi suprema est lex*, and argued that necessity made its own law, and that in certain cases even royal instructions "may be deviated from with impunity."

Rev. William Robinson in a letter dated November 20, 1760, informed Dr. Sherlock, the Bishop of London, that the two pamphlets were received with great applause in the Colony, "which," he said, "sufficiently showed to what a pitch of insolence many are arrived at not only against our most worthy Diocesan, but likewise against his Majesty's most honorable privy Council." He thought that the tendency of the whole affair was "to bring about a change in our religion as may alter the constitution of the State."

In the meantime, Mr. Camm had recovered from the fatigue of his ocean voyage, and, on June 27, in company with Mr. Warrington and Mr. Robinson came up to Williamsburg. After their arrival they called upon the Governor at the Palace and handed him the order of the Privy Council and the instructions to put them into effect. Mr. Robinson's account of the interview is not calculated to give us a very high opinion of the behavior of men in high society in those days. Fauquier was offended, and perhaps justly so, that these papers were delivered to him opened and not till ten months after their date and five months after copies had been sent over by Camm to his confidential friends.

He flew into a great passion and accused Mr. Camm of disrespect in not calling upon him at once on his return. He also attacked him for slandering him in England; and when Mr. Camm started to justify himself upon this head, the governor would not stop to hear him out, but called with great vociferation to his negroes, telling them when assembled, with his finger pointed at Mr. Camm's face, to "look at that Gentleman and be sure to know him again, and under no circumstances to permit him to revisit the Palace."

Says Camm's friend, Mr. Robinson: "There was something peculiar in this last indignity, for it is the greatest affront that can be put upon a freeman here to give orders concerning him to his slaves."

The two clergymen therefore left the palace, and repaired to the Mayor before whom Robinson made an affidavit that he had seen Mr. Camm deliver the papers to the governor, a procedure on the part of Mr. Robinson which long rankled in Fauquier's bosom and which he never entirely forgave.

After this Mr. Camm tried to induce Mr. Dawson to call the clergy that he might report to them the result of his mission, but Mr. Dawson, who was friendly to the governor, declined. The commissary indeed appears at this time to have been in a very unhappy condition not only in regard to the clergy of whom he was the nominal head, but in regard to the professors of the College of which he was the president.

In August, 1760, two of the new professors, Rev. Goronwy Owen and Rev. Jacob Rowe, becoming merry with the wine cup led the boys of the College in a row with the boys of the town, and the former was removed and the latter to save himself resigned. The commissary himself began to drink hard and was indicted by the grand jury for drunkenness. When he was arraigned before the College Board, he confessed the offence, but had the honor to have an excuse made for him by his friend, Governor Fauquier, who said that it was no wonder that the poor man got drunk, since he had been driven to desperation by persons of his own cloth. His death a few weeks later on December 2, 1760, seems to show that he was suffering under a complete breakdown, and was really not responsible for his conduct. In his obituary in the *Maryland Gazette*, no doubt the work of his friend Fauquier, Mr. Dawson is praised for his "moderation, meekness, forgiveness and long suffering," and it is also stated that "it is much to be feared he fell a victim to the repeated marks of ingratitude and Malice which he unhappy man frequently experienced in his passage through this State of Probation."

In his place, and to the disgust of Governor Fauquier especially, Rev. William Robinson was appointed by the Bishop of London commissary and Rev. William Yates succeeded as president of the College.

Governor Fauquier issued a proclamation in regard to the

royal disallowance, but by using the word "repeal," not to be found in the order of the Privy Council, he disseminated the notion that the Two Penny Act, which had now expired by its own limitations, was only annulled from the time of the proclamation and not from its inception, which was very illogical, to say the least.

Afraid to risk all upon Mr. Camm's suit in the General Court, various other ministers, acting independently, instituted separate actions in the county courts. Among these were Rev. Thomas Warrington, who sued in Elizabeth City County, Rev. Alexander White, who sued in King William County, and Rev. James Maury, who brought suit in Hanover County.

Mr. Camm, now pretty well warmed up to the fight, wrote a pamphlet in 1763, which he called "A Single and Distinct view of the Act vulgarly called the Two Penny Act," in which he severely criticised "the justice and charity" ascribed to the same by Col. Carter in his pamphlet 1759, and the *Salus Populi* argument of Col. Richard Bland's in 1760. Unable to find a publisher in Williamsburg, he had it published by Jonas Green that year at Annapolis in Maryland. No copy of this interesting document is to be found in America, though one is very probably preserved in the library of the Bishop of London.

Col. Bland retorted in a letter published in the *Virginia Gazette*, October 28, 1763, and Camm replied in a letter entitled "Observations," published shortly after. Personalities flew about quite freely, and in the early part of 1764 Col. Carter came to Bland's assistance with a pamphlet entitled "The Rector Detected: Being a just defence of The Two Penny Act against the artful misrepresentation of the Reverend John Camm, rector of Yorkhampton, in his *Single and Distinct View*, containing also a plain confutation of his several Hints, as a specimen of the Justice and Charity of Colonel Landon Carter."⁵

In the meantime, the separate actions in the county courts by the ministers were tried with varied results. In the suit of Rev. Thomas Warrington, of Elizabeth City County, the jury gave

⁵ Bland's letter in the *Gazette* and Camm's "Observations" were published by Bland in his pamphlet "The Colonel Dismounted."

damages if the court considered the law invalid, but the court held the act to be valid and refused to enter up judgment for the plaintiff. In the case of the Rev. Alexander White, St. David's Parish, King William County all the questions were left to the jury, and they found against him. In both these cases, appeals were taken to the General Court, where Mr. Camm's suit was pending.

None of the suits which were brought excited such interest as that instituted by Rev. James Maury, of Fredericksville Parish, Hanover County. In this case the court decided the Two Penny Act to be null and void, and a jury was summoned for the December term, 1763, to ascertain the damages. The vivid grouping of authentic incidents around the trial has no rival in the story of the writs of assistance in Massachusetts. If Otis in Massachusetts, in the language of John Adams, was "a flame of fire," his light soon burnt low, when the crisis of the Stamp Act was reached. On the other hand, Patrick Henry, who now flamed before the people of Virginia in Hanover in the Parson's cause, blazed at the latter period like a "Pillar of Fire" before the whole American people, and afterwards shone with scarcely diminished lustre throughout the rest of the period preliminary to the Revolution.

This is the way in which Camm's friend, Commissary William Robinson, told the story of the action in Hanover:⁶

"The event of Mr. Maury's cause on the same question was more extraordinary than either of the former brought in the county courts. For here the court adjudged the Act to be no law. But the jury, summoned afterwards on a writ of inquiry to settle the damages, tho it was proved by unexceptionable evidence uncontradicted, that the tobacco for which the plaintiff had been allowed 16s. 8d. a hundred, was worth 50 shillings a hundred, had the affrontery to bring in one penny damages for the Plaintiff. To this important Verdict they were persuaded by the strange argument of a young lawyer; who professed afterwards that he had acted solely from desire of popularity. He was pleased to tell the jury that the use of the clergy consisted only in their promoting obedience to civil sanctions; that for daring to complain of a just law passed

⁶ Mr. Maury himself gave an account of the trial, which is published in Maury, *Memoirs of a Huguenot Family*, 421, 423.

by such a power as the Governor & Assembly, they ought to be severely punished; that he hoped they would make an example of Maury in particular, as far as they could at present by giving him a penny damages, and that the King by taking upon him to disallow the Act of the Governor & Assembly had forfeited all right of obedience heretofore due his subjects in Virginia. For all of which he received no Check from the Court, nor has he hitherto been taken notice of by any other power; tho' he pleaded before a numerous audience of magistrates & Assembly men & persons of all ranks in the Colony, some of whom did murmur at the time 'treason,' 'treason!' * * * After the trial was over this Lawyer excused himself to the plaintiff by telling him that he had no ill will against him or wished to hurt him, but that he said what he did to make himself popular. He has succeeded in making himself popular in that part of the country where he lives. He has since been chosen a representative for one of the counties in which character he has lately distinguished himself in the House of Burgesses on occasion of the Arrival of the Act of parliament for Stamp duties. While the Assembly was sitting, he blazed out in a violent speech against the Authority of parliament and the King, comparing his Majesty to a Tarquin, a Cæsar, and a Charles the First and not sparing insinuations that he wished another Cromwell would rise."

It may be proper to say here that Henry's part in this controversy has been often misunderstood. His speech has been taken as the beginning of Virginia's protest against the prerogative, whereas the first Two Penny Act disregarding the accepted constitution was eight years earlier and the field had been occupied by Bland and Carter before him. Nor was his action an advocacy of the poor against the rich, as the latter class fared best under the Two Penny Act. As a matter of fact, "Henry fought the battle of the whole colony and of the ruling powers more than of any other element."

The result in Mr. Henry's case was very disheartening to all of the clergy except their intrepid leader, Rev. John Camm, who was not to be beat so readily. In the spring of 1764 he published a pamphlet in reply to Colonel Carter's "Rector Detected," entitled "A Review of the Rector Detected or the Colonel Reconnoitred. Part of the First." In this very spicy production Camm took notice of Colonel Carter's rather singular ar-

⁷ H. J. Eckenrode, *Separation of Church and State in Virginia*.

gument that the passage of the Two Penny Act without a suspending clause, instead of exhibiting a treasonable intent was proof of "the most dutiful regard imaginable to the Sovereign," "whose innate goodness could not require such a clause in a thing so universally desired." Said Camm in reply:

"If so old and deep a politician as the Colonel, so able a Writer, a Man so acute at Demonstration, can express himself in this unguarded Manner in print on the Subject of the Prerogative, producing the Freedom he takes with the Power of the Crown as an Expression of Regard to his Sovereign, no Wonder that an obscure Lawyer, the other Day, when a court had previously adjudged the Two Penny Act to be no law, and a Jury was was summoned on a Writ of Inquiry to settle the Damages which the Plaintiff has sustained by the said Act, adjudged no law, should tell the Jury that the King, by disallowing the said Act, *had forfeited the Allegiance of the People of Virginia*; and that the Parsons, for opposing the said Act by *legal Means*, instead of obtaining Damages, deserved to be *severely punished*. No Wonder that the Jury, in Opposition to unexceptional Evidence, instead of bringing in the Difference between 50s. a Hundred and 16s. 8d. upon 16,000 Weight of Tobacco, which latter price the Plaintiff had been paid, brought in 1d. Damages for the Whole. No Wonder that the Court refused to let the Evidence be recorded. No wonder that there was a small Cry of Treason among the Bystanders. No wonder that the Court, though called upon by the opposite Pleader to take Notice of his Adversary's Behaviour, permitted the Offender to proceed in his treasonable Harangue without any Repri-mand or Interruption. No wonder that though this Harangue was made in the Presence of various Magistrates, and some Assemblymen, yet no further Notice has been taken of this remarkable Transaction. No Wonder that after the Trial was over the Pleader excused himself to the Plaintiff for the Injury he had done him, alleging that what he had said of the King's *forfeiting the Allegiance of the People*, and ill Behaviour of the Clergy towards superior Authority, was only intended to render himself *popular*. I hope he is mistaken and that to insult *Majesty* is not the high Road to *Popularity* in this loyal Country, whatever it may be to abuse and oppress the Clergy."

In April, 1764, Mr. Camm's case, which I fear had been purposely delayed before the General Court, came up for a hearing after more than three years' sleep on the docket. The lawyer opposed to him was Robert Carter Nicholas, a strong friend of the established church, but who assumed the ground first suggested by Fauquier's use of the word "repeal" in his proclama-

tion that the King's order was prospective and could have no effect on the Two Penny Act, which had expired before the disallowance came to hand. According to Mr. Robinson it was also claimed in court that a law passed by the Assembly and approved by the Governor was legal, however much the governor himself might be subject to punishment as over-stepping his instructions. The result was that the majority of the Court—John Blair, John Tayloe, William Byrd, Presley Thornton and Robert Carter Burwell—decided against Camm's conclusions, and in favor of the validity of the act. As the court was not equally divided, Governor Fauquier did not vote, but after the judgment was given he arose and declared that it had his full concurrence.

About July, 1764, Col. Bland came out in a pamphlet written eight months before, which was entitled: "The Colonel Dis-mounted, or the Rector Vindicated in a letter addressed to his Reverence containing a dissertation upon the Constitution of the Colony."

This pamphlet undertook to discuss in a bitter ironical style Camm's "Single and Distinct view" and his "Observations" upon Col. Bland's letter already noticed. "Your infinite wit and humor," says the writer addressing Camm, "can transform the un-ripe crab, the mouth distorting Persimmon, the most arrant trash, into delicious fruit. * * * Why did they (the two colonels, Carter and Bland) inflame your resentment? Did they not know your Reverence has honesty to represent facts truly, Learning to write accurately, and wit to make your lampoons, though loaded with rancour and Abuse, agreeable and entertaining? Presumptuous Tithe-Pig Colonel (Carter), infatuated syllogistical Colonel (Bland)."

The real importance of this pamphlet lies in its earnest discussion of the Virginia constitution under the British Sovereign. Indeed, in his perception of the real authority of an American colony Bland is not only ahead of James Otis, Samuel Adams or any other pamphleteer or writer in time, but is far ahead of them in his views. This pamphlet is the great initial paper of the American Revolution.

It had a large circulation, but its contents seem unknown to

modern writers. It covered the whole ground of the American Revolution even to its most advanced stages. It took the ground that "any tax respecting our internal policy which may hereafter be imposed upon us by Act of Parliament is arbitrary and may be opposed." These words exempted taxes for the regulation of trade, but plainly included taxes for revenue purposes, whether laid directly, or indirectly by imports. Bland denied that Parliament had any right to make any laws for Virginia, and asserted that Virginia's code of law consisted of the common law, the statutes of England made before the settlement at Jamestown, and the statutes of her own General Assembly. Any interference of England *may be opposed*. To all intents and purposes Virginia was a co-ordinate kingdom with England. There is really little difference between the doctrine set forth in this pamphlet and that in Bland's later pamphlet entitled "An Enquiry into the Rights of the British Colonies," published in 1766. Dr. Moses Coit Tyler declares that the doctrine then advanced was a "prodigious innovation" and that it became afterwards the ground adopted for the dissolution of the British Crown.⁸

Mr. Camm appealed his case to England, and in the very letter which the Virginia Committee of Correspondence wrote to their agent in London, July 28, 1764, protesting against the Stamp Act, instructions were given him to see that the suit appealed by Camm was properly defended. The appeal was heard in 1767, but the Privy Council, anxious at that time to concilliate Virginia, dismissed the suit on the ground that it was improperly brought. This appears to have been a mere evasion as the clergy's case was prepared by one of the best lawyers in England, Ferdinando Paris.

⁸ Bland's style is remarkably smooth, as compared with James Otis and other contemporary writers. One wonders how Dr. Moses Coit Tyler could describe it as "jerky and harsh," after his words of eulogy for much inferior writers. But that the Doctor, in spite of his really deserved reputation as a critic, could make some terrible mistakes, is shown in his very ill-founded allusion to the "fresh and unadorned rascality" of the famous option law. Tyler, *Henry*, 37. Dr. Charles Elliott Howard says: "There is small ground for so harsh a judgment." Howard, *Preliminaries of the American Revolution*, I., 94.

Mr. Warrington appealed to the General Court, but it declined to hear the case pending Camm's appeal in England. After the adverse action of the Privy Council the General Court in Virginia at the October term, 1767, decided against Warrington, and even refused to permit an appeal to England, arguing that the decision in Camm's case had decided the whole matter. The judges, however, must have known that the decision was on a mere technicality and did not preclude a new suit.

Still unconquered, Mr. Camm prevailed upon the convention of the clergy, which assembled in 1769, on the incoming of Lord Botetourt to appoint a committee to consider an application to the Governor for a mandamus to remove Warrington's cause to England. Robinson was now dead, and James Horrocks, who was both commissary and president of the College, advised against the application, and it is probable that Botetourt refused to issue the writ; for we see no more of the Parson's causes in the record. The casuistry used at different times by the assembly, the governor, the courts and the juries, shows better than anything else the determination of the Virginians to defeat the King's will. The people of Virginia felt that the salaries paid the clergy were taken from their pockets, and, as with the Stamp Act, they claimed the right to control their own money without interference from abroad. Such, indeed, were the sentiments expressed to the world by the House of Burgesses at this very time on the subject of the duties on tea.⁹

⁹ The main authority for this article is *Papers Relating to the History of the Church in Virginia*, edited by William Stevens Perky. Copies of the different pamphlets mentioned in the text are found in the Virginia State Library. For *bibliography*, see sixth annual report of the Library Board of the Virginia State Library. Other helpful material is found in H. J. Eckenrode, *Separation of Church and State*, in same report, and published also separately; Howard, *Preliminaries of the American Revolution*, in Hart's *American Nation*; Henry, *Life and Speeches of Patrick Henry*; Wirt, *Henry*; and Tyler, *Henry*.